

resources will be able to meet defense mobilization and deployment requirements in support of U.S. defense and foreign policy commitments. In support of this objective, DoD requirements shall be satisfied by the procurement of airlift from commercial air carriers participating in the CRAF program.

#### 247.7001 Definitions.

As used in this subpart—

*CRAF contractor* means a U.S. civilian air carrier holding a certificate under Title 49 United States Code, Section 41102, which participates in the CRAF program. This definition complies with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, Fly American Act), as implemented in FAR subpart 47.4.

*CRAF participation* means acceptance of the aircraft offered by the contractor into the CRAF program prescribed by the Commander-in-Chief, U.S. Transportation Command, and contractor satisfaction of the other requirements of that program.

*CRAF Program* means a cooperative plan developed by DoD with the U.S. civilian air carrier industry to augment DoD organic airlift capability during national emergencies and defense-oriented situations.

#### 247.7002 Applicability.

This subpart applies to all contracting methods used to acquire air transportation for DoD passengers or property. The contract methods affected include agreements (freight forwarding agreements), bills of lading, transportation requests, tenders, and other transportation forms as well as more traditional contract methods such as contracts and purchase orders.

#### 247.7003 Air transportation of DoD passengers and cargo.

(a) CRAF contractors shall be used to transport DoD passengers and cargo by air unless the contracting officer determines—

(1) Available CRAF contractor airlift is not suitable and responsive to the requirement;

(2) Law, regulation, or international agreement precludes the use of a CRAF contractor; or

(3) The cost of transportation by a CRAF contractor is unreasonable.

(b) If the total transportation charge exceeds \$500,000, the contracting officer shall obtain the concurrence of U.S. Transportation Command (USTRANSCOM/TCJA) and furnish a copy of the determination described in paragraph (a) of this section to

USTRANSCOM/TCJA before using a non-CRAF carrier.

(c) Each contract or agreement shall provide for immediate termination in the event a contractor fails to maintain CRAF membership.

#### 247.7004 Civil Reserve Air Fleet.

Contractor's requests for membership in the CRAF program are processed by the Assistant for Civil Air, Air Mobility Command (AMC), Scott AFB IL 62225-5001. Participation requires the offer and commitment of contractor owned or controlled aircraft, suitable and responsive to military requirements, to the CRAF program and the execution of a CRAF contract. The Assistant for Civil Air, AMC, maintains a current list of CRAF contractors and may be contacted regarding contractor eligibility and membership.

### PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

8. Section 250.102 is added to read as follows:

#### 250.102 Policy.

*Limitation on payment.* Prior to payment of either an equitable adjustment or other particular relief under Public Law 85-804, see 10 U.S.C. 2410(b).

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.233-7000 [Removed]

9. Section 252.233-7000 is removed.

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### 48 CFR Part 252

#### Defense Federal Acquisition Regulation Supplement; Ground and Flight Risk

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify who approves flight crew members, increase the amount of the contractor's financial responsibility for loss or damage to the aircraft from \$1,000 to \$25,000, and make other minor changes in the clauses entitled "Ground and Flight Risk" and "Aircraft Flight Risks."

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before

January 12, 1996, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301-3062. Telefax number (703) 602-0350. Please cite DFARS Case 95-D028 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule amends the clauses at DFARS 252.228-7001, Ground and Flight Risk, and 252.228-7002, Aircraft Flight Risks, based on the recommendations of a Tri-Service Process Review Team, which conducted an intensive 4-month study of contractor flight operations. The most substantive issues relate to approval of the flight crew members and the amount of the contractor's financial responsibility for loss or damage to the aircraft. Procedures for authorizing contractor's flight crew members and flight are clearly delegated to the Government Flight Representative in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations." With regard to the contractor's financial responsibility for loss or damage to the aircraft, the proposed rule increases the amount from \$1,000 to \$25,000, because \$1,000 does not adequately compensate the Government for the processing costs required to recover the \$1,000, and \$1,000 does not operate as an economic incentive for the contractor to adhere to prudent care of property.

##### B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there are only a limited number of defense aviation contractors to which these DFARS clauses apply, and few of those contractors are small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95-D028 in correspondence.

### C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require OMB approval under 44 U.S.C. 3501 *et seq.*

### List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, it is proposed that 48 CFR Part 252 be amended as follows:

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 252.228-7001 is amended by revising paragraphs (d)(2), (e), (i) introductory text, (i)(1), (i)(2) introductory text, and (k) to read as follows:

#### 252.228-7001 Ground and flight risk.

\* \* \* \* \*

(d) \* \* \*

(2) Is sustained during flight if the flight crew members have not been approved in writing as delineated in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations" (Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1C; and Defense Logistics Agency Manual 8210.1);

\* \* \* \* \*

(e) With the exception of damage, loss, or destruction in flight, the Contractor assumes the risk and shall be responsible for the first \$25,000 of loss or damage to the aircraft in the open or during operation resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) of this clause shall not include the dollar amount of the risk assumed by the Contractor. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government \$25,000 (or the amount of the loss, if less) as directed by the Contracting Officer.

\* \* \* \* \*

(i) If prior to delivery and acceptance by the Government, the aircraft is

damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(1) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(2) Terminate this contract with respect to the aircraft. If this contract is terminated with respect to the aircraft, the Contractor shall be paid the contract price for the aircraft (or if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

\* \* \* \* \*

(k) The Contractor agrees to be bound by the operating procedures contained in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations" in effect on the date of contract award.

3. Section 252.228-7002 is amended by revising paragraphs (c) introductory text and (e) to read as follows:

#### 252.228-7002 Aircraft flight risks.

\* \* \* \* \*

(c) Unless the flight crew members previously have been approved in writing as delineated in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations" (Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1C; and Defense Logistics Agency Manual 8210.1), the Contractor shall not be—

\* \* \* \* \*

(e) The Contractor agrees to be bound by the operating procedures contained in the combined, tri-service regulation entitled "Contractor's Flight and Ground Operations" in effect on date of contract award.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Notice of Extension of Comment Period on Reports and Other Data Pertaining to the Listing of the Bruneau Hot Springsnail

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on reports and other data pertaining to the listing of the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) is extended. The notice of availability opening the public comment period was published on September 12, 1995 (60 FR 47339), which opened the comment period until November 13, 1995. This document extends the comment period until December 15, 1995.

**DATES:** The comment period is extended until December 15, 1995. Any comments and materials received by the closing date will be considered in the final determination.

**ADDRESSES:** Comments and materials concerning the reports and other information pertaining to the listing of the Bruneau hot springsnail should be submitted to the U.S. Fish and Wildlife Service, Snake River Basin Office, 4696 Overland Road, Room 576, Boise, Idaho 83705. Reports and other data cited in this notice, and public comments and other materials received will be available for public inspection during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruesink, Supervisor, at the address listed above (telephone 208/334-1931, facsimile 208/334-9493).

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 25, 1993, the U.S. Fish and Wildlife Service (Service) published a final rule in the Federal Register determining the Bruneau hot springsnail (*Pyrgulopsis bruneauensis*) to be an endangered species (58 FR 5946). In its decision to list the springsnail the Service relied, in part, on a provisional draft of a U.S. Geological Survey (USGS) report (Berenbrock 1992) analyzing the hydrology of the geothermal aquifer in the Bruneau Valley area. The USGS provided the Service with the draft report, but did not release it to the public and requested that the Service not release the report to the public, pending agency review and approval.

On May 7, 1993, the Idaho Farm Bureau Federation Owyhee County Farm Bureau, Idaho Cattleman's Association, and Owyhee County Board of Supervisors challenged the listing decision on several grounds in a lawsuit filed in United States District Court for the District of Idaho. The plaintiffs argued that the Service committed a number of procedural violations during the listing process, including not allowing the public to review the draft USGS report. On December 14, 1993,